

<b>TO:</b> Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	<b>REPORT ON THE          FILING OR DETERMINATION OF AN          ACTION REGARDING A PATENT OR          TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court NORTHERN DISTRICT, GA on the following ☒ Patents or ☐ Trademarks:

DOCKET NO.	DATE FILED 1/29/2008	U.S. DISTRICT COURT NORTHERN DISTRICT, GA
<b>PLAINTIFF</b>  AMERIK SUPPLIES, INC, a Georgia Corporation and ERIK NEILSEN, a resident of Georgia		<b>DEFENDANT</b>  INSITUFORM TECHNOLOGIES, INC., a Delaware Corporation, et al.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 See Attached Exhibit		
2 5,927,341		
3 6,337,114 <sup>B1</sup>		
4 6,899,832 <sup>B2</sup>		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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In the above—entitled case, the following decision has been rendered or judgement issued:

<b>DECISION/JUDGEMENT</b>
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CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

31. Defendant Cosmic warranted that the "Top Hat" product would be delivered to AMerik free of any title or ownership claims, including but not limited to any claim of patent infringement.

32. Defendant Cosmic has breached that warranty in view of the present claims asserted against Plaintiffs by Insituform Technologies, Inc. and Insituform (Netherlands), B.V.

33. Plaintiffs have been damaged as a result of Defendant's breach of its UCC warranty, including, but not limited to, incurring costs and attorney's fees in connection with this litigation.

34. Defendant Cosmic is obligated to indemnify and hold Plaintiffs harmless consistent with O.C.G.A. § 11-2-312(3).

35. Plaintiffs are entitled to recovery of any damages incurred as a result of each Defendant's breach of its UCC warranty in an amount to be determined at trial.

**COUNT IV**  
**EQUITABLE INDEMNIFICATION**

36. Plaintiffs incorporate the allegations of paragraphs 1 through 6 and 16 through 35 above as if fully incorporated here.

37. Defendant Cosmic is contractually bound and/or has a common law duty to indemnify Plaintiffs and hold Plaintiffs harmless from the claims of Insituform Technologies, Inc. and Insituform (Netherlands), B.V.

38. Defendant Cosmic had a duty to deliver the "Top Hat" system free from any security interest or other lien or encumbrance or rightful claim of infringement by a third party.

39. Plaintiffs were not directly involved in the manufacturing of the "Top Hat" system and purchased the "Top Hat" system from Defendant Cosmic after Defendant Cosmic made the representation that the goods would delivered free of the rightful claim of any third person by way of infringement.

40. Plaintiffs were not involved in any infringement of the '114, '341 and '832 patents and any finding of infringement or liability is strictly the result of the actions of the Defendants, if any liabilities exist at all.

41. Defendant Cosmic had a duty it failed to properly discharge.

42. Plaintiffs have suffered damages as a result of Defendant Cosmic's failure to properly discharge its duty and the Defendant Cosmic is therefore liable to Plaintiff for all damages proven.

**COUNT V – GEORGIA VOUCHMENT STATUTE (O.C.G.A. § 9-10-93)**

43. Plaintiffs incorporate the allegations of paragraphs 1 through 6, and 16 through 42 above as if fully incorporated herein.

44. Plaintiffs have placed Defendant Cosmic on notice of the claims of patent infringement by Insituform Technologies and Insituform ("the Insituform claims"), pursuant to the Georgia Vouchment Statute, O.C.G.A. § 9-10-93. Copy of correspondence dated November 21, 2007 attached hereto as Exhibit A.

45. Defendant Cosmic has failed and refused to undertake the defense of the Insituform claims.

46. Pursuant to O.C.G.A. § 9-10-93, Defendant Cosmic is liable to Plaintiffs for any and all damages, losses, or demands, including reasonable attorneys' fees, incurred by Plaintiffs as a result of the Insituform claims.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray that:

A. Plaintiff's claim for declaratory relief be granted and judgment be entered that the '341, '114, and '832 patents are not infringed and are invalid and unenforceable;

B. Judgment be entered against Defendants Insituform Technologies and Insituform, jointly and severally, for Plaintiffs' costs of litigation, including reasonable attorneys' fees;

C. Judgment be entered declaring that Defendant Cosmic must indemnify and hold harmless AMerik and Nielsen from any claims arising from the offering for sale or selling of the Top Hat product;

D. Judgment be entered against Defendant Cosmic awarding Plaintiffs any and all damages incurred as a result of any claims arising from the offering for sale or sale of the Top Hat product, including their reasonable attorneys' fees and other costs of defense and litigation in defending any claims of infringement or challenging the validity of the Insituform patents;

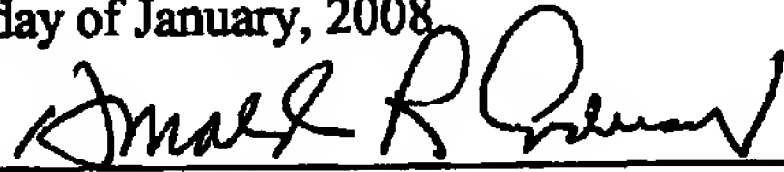
E. Judgment be entered against Defendant Cosmic awarding Plaintiffs attorneys' fees in this action; and

F. Judgment be entered awarding such other and further relief as the Court deems just and proper.

**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a jury on all issues so triable.

Respectfully submitted this 29th day of January, 2008



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ORIGINAL  
FILED IN CLERK'S OFFICE  
U S D C Atlanta

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JAN 29 2008

JAMES N. HATTEN, CLERK  
By: *[Signature]* Deputy Clerk

AMERIK SUPPLIES, INC., a Georgia  
Corporation, and ERIK NIELSEN, a resident of  
Georgia,

Plaintiffs,

v.

INSITUFORM TECHNOLOGIES, INC., a  
Delaware Corporation, INSITUFORM  
(NETHERLANDS), B.V., INC., a corporation  
of the Netherlands and Delaware, and  
COSMIC-SONDERMASCHINENBAU  
GMBH, an Austrian entity,

Defendants.

Civil Action No. \_\_\_\_\_

1 08-CV-0320

WSD

**COMPLAINT FOR DECLARATORY RELIEF AND  
INDEMNIFICATION**

Plaintiffs AMerik Supplies, Inc. ("AMerik") and Erik Nielsen ("Nielsen"), by  
and through their undersigned counsel, hereby file this Complaint for Declaratory  
Relief against Insituform Technologies, Inc. ("Insituform Technologies") and  
Insituform (Netherlands), B.V., Inc. ("Insituform") and for Declaratory Relief and  
Indemnification from Cosmic-Sondermaschinenbau GmbH ("Cosmic"), as  
follows:

### **THE PARTIES**

1. AMerik Supplies, Inc. is a Georgia Corporation with its principal place of business at 2600 Ainsley Ct., Marietta, Georgia 30066.
2. Erik Nielsen is a citizen of Denmark, residing at 2100 Ainsley Ct. , Marietta, Georgia 30066.
3. Defendant Insituform Technologies, Inc. is a Delaware Corporation, whose registered agent is CT Corporation, Wilmington, Delaware, and whose principal place of business is at 17988 Chesterfield, MO 63005.
4. Insituform (Netherlands), B.V., Inc. is a dual citizenship corporation registered in the Netherlands and Delaware with a principal place of business at Westbaak 6, 3rd Floor, 3012 KK Rotterdam, the Netherlands, and its registered agent is CT Corporation, Wilmington, Delaware.
5. Defendant Cosmic Sondermaschinenbau GmbH is an Austrian legal entity, having its principal place of business at A-3072 Kasten, Steinabruck 35, Austria, and is engaged in manufacturing, sale and offering for sale the "Top Hat" system in the United States. Defendant Cosmic may be served upon through its President and CEO Johann Kubel.



## **JURISDICTION AND VENUE**

6. Jurisdiction in this court exists pursuant to 28 U.S.C. §§ 1331, 1332 and 1338(a). Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(b). Defendants Insituform Technologies and Insituform have, upon information and belief, transacted business and have offered and sold products in Georgia, and therefore jurisdiction and venue are proper as to those Defendants. Defendant Cosmic has transacted business in the State of Georgia and has offered for sale or sold Top Hat systems in Georgia, and therefore jurisdiction and venue are proper as to Defendant Cosmic.

## **COUNT I** **DECLARATORY JUDGMENT**

7. Plaintiffs request that this Court grant a declaratory judgment declaring U.S. Patent No. 5,927,341 ("the '341 patent), U.S. Patent No. 6,337,114 ("the '114 patent") and U.S. Patent No. 6,989,832 ("the '832 patent") invalid, unenforceable and not infringed. This counterclaim arises under the patent laws of the United States, 35 U.S.C. § 1, *et. seq.* and the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

8. Defendant Insituform (Netherlands), B.V. claims to own the '341 patent, the '114 patent and the '832 patent and Defendants Insituform and

Insituform Technologies have brought suit against Plaintiffs for alleged infringement of the '341 patent, the '114 patent and the '832 patent in the U.S. District Court for the Eastern District of Virginia, in Insituform Technologies, Inc., et al. v AMerik Supplies, Inc., et al., Civil Action No. 3:07-CV-687-HEH. See Virginia Complaint, attached as Exhibit 2 to the correspondence attached hereto as Exhibit A. ("the Virginia Complaint").

9. An actual controversy exists between Plaintiffs and Defendants Insituform and Insituform Technologies based upon Plaintiff having filed the Virginia Complaint against Plaintiffs.

10. Neither of the Plaintiffs nor any of AMerik's customers have infringed any of the claims of the '341 patent, the '114 patent or the '832 patent.

11. Upon information and belief, and as will likely be shown sufficient by evidence after a reasonable opportunity for further investigation and discovery, the '341 patent is invalid for failure to comply with the conditions and requirements for patentability specified in Title 35 U.S.C., including, but not limited to, 35 U.S.C. §§ 102, 103, and/or 112.

12. Upon information and belief, and as will likely be shown sufficient by evidence after a reasonable opportunity for further investigation and discovery, the

'114 patent is invalid for failure to comply with the conditions and requirements for patentability specified in Title 35 U.S.C., including, but not limited to, 35 U.S.C. §§ 102, 103, and/or 112.

13. Upon information and belief, and as will likely be shown sufficient by evidence after a reasonable opportunity for further investigation and discovery, the '832 patent is invalid for failure to comply with the conditions and requirements for patentability specified in Title 35 U.S.C., including, but not limited to, 35 U.S.C. §§ 102, 103, and/or 112.

14. Plaintiffs have been injured and damaged by Plaintiffs' filing of the Virginia Complaint asserting patents that are invalid, unenforceable and/or not infringed.

## **COUNT II – INDEMNIFICATION – BREACH OF CONTRACT**

15. Plaintiffs incorporate the allegations of paragraphs 1 through 6 above as if fully incorporated herein.

16. This claim is brought under O.C.G.A. § 11-2-312 for a judgment adjudging that Cosmic is liable to AMerik and Nielsen for any claims, demands, judgments, costs, attorney's fees or any other relief in connection with the subject

matter or claims brought by Insituform Technologies, Inc., Insituform (Netherlands), B.V. or any other party against AMerik alleging infringement of U.S. Patent Nos. 5,927,341 (the "'341 patent"), 6,337,114 (the "'114 patent"), and 6,899,832 (the "'832 patent") in Insituform Technologies, Inc., et al. v. AMerik Supplies, Inc., et al., Civil Action No. 3:07-CV-687-HEH, U.S. District Court for the Eastern District of Virginia. (See Virginia Complaint, attached as Exhibit 2 to the correspondence attached hereto as Exhibit A), or in any other action.

17. There is a real and actual controversy between Plaintiffs and the Defendant Cosmic concerning the liability and indemnity for allegations and any damages resulting from any finding of infringement of the asserted '114, '341 and '832 patents.

18. Defendants Insituform Technologies, Inc. and Insituform (Netherlands), B.V. have alleged that Plaintiffs have infringed the '114, '341 and '832 patents by making, using, offering to sell, and/or selling lateral lining products and/or systems, including its "Top Hat" system.

19. Defendants Insituform Technologies, Inc. and Insituform (Netherlands), B.V. have also alleged that Plaintiffs have contributed to the infringement of the '114, '341 and '832 patents by selling and/or offering for sale

lateral lining products and/or systems to customers, contractors, subcontractors and/or licensees.

20. Defendants Insituform Technologies, Inc. and Insituform (Netherlands), B.V. have also alleged that Plaintiffs have knowingly induced infringement of the '114, '341 and '832 patents by training, instructing, demonstrating, and encouraging its customers, contractors, subcontractors and/or its licensees to use the lateral lining products and/or systems.

21. Plaintiffs deny any infringement of the '114, '341 and '832 patents.

22. Each of the respective AMerik "Top Hat" systems were sold and supplied to AMerik by Defendant Cosmic.

23. Plaintiff Nielsen has acted as an agent or employee of AMerik in the sales of "Top Hat" systems.

24. Defendant Cosmic is obligated to indemnify and hold Plaintiffs harmless for any liability, damages or loss in connection with the offering for sale and/or selling of the "Top Hat" systems sold and supplied to AMerik by Defendant Cosmic, including reasonable attorneys' fees and costs of litigation.

25. A contract existed between Cosmic and AMerik concerning the purchase of the "Top Hat" product from Cosmic USA by AMerik.

26. Pursuant to the terms of the contract, Cosmic expressly represented that the Top Hat products did not infringe any valid U.S. patents.

27. Defendant Cosmic is liable to Plaintiffs for any damages, claims, demands, judgments, costs, attorneys' fees or any other relief incurred by or awarded against Plaintiffs as a result of these claims of infringement.

**COUNT III**  
**BREACH OF GEORGIA'S UCC WARRANTY OF TITLE AND**  
**AGAINST INFRINGEMENT**

28. Plaintiffs incorporate the allegations of paragraphs 1 through 6 and 16-27 above as if fully incorporated here.

29. AMerik purchased the "Top Hat" system from the Defendant Cosmic. Defendant Cosmic is a merchant who regularly deals in goods including but not limited to, the "Top Hat" system.

30. O.C.G.A. § 11-2-312(3) states:

Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered